IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2499 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JYOTINDRA C SHAH

Versus

NEW INDIA ASS CO LTD

Appearance:

MR SANDIP C SHAH for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 06/10/2000

ORAL JUDGEMENT

The petitioner challenges the order of punishment passed against him pursuant to the Departmental proceedings and the order made by the Appellate Authority to the extent to which it confirms the findings and order

of the Disciplinary Authority.

2. The petitioner who was serving as a Development Officer with the respondent Insurance Company at Wadhwan was charged on 28.3.1988 for the alleged misconduct of having issued Fire Temporary Cover Note for Rs. 3 lakhs on 4.4.1985, covering cotton bales stock, which was lying in the open compound of the factory after the stock was already destroyed by fire. In his defence, the petitioner had taken up a stand that he had left the Cover Note on the table of the concerned Assistant at about 1.15 P.M and that Cover Note was examined by the Assistant at 2.15 P.M and that since the fire had taken place at about 2.15 P.M, the risk was accepted well before the occurrence and that there was no intention on his part to have favoured the insured person. The petitioner was given an opportunity of meeting with the charges framed against him during the domestic enquiry, which seems to have been elaborately held. The competent authority after going through the record and proceedings as well as the enquiry report, satisfied itself that the petitioner was given an adequate opportunity to defend himself against the charges and came to the conclusion that the findings were based on the evidence recorded during the enquiry and that there was no procedural lacuna in the conduct of the proceedings. After appreciating the evidence that was on record and noticing the contradictions in the version of the petitioner, the competent authority came to a finding that the time and date of payment of premium suggested by the delinquent had been cooked up by him to indicate that the Cover Note was issued prior to 12.30 P.M on 4.4.1985. On the basis of the evidence discussed by the competent authority, he agreed with the enquiry officer on the finding that the fire took place at about 1.30 P.M or even prior to that and though the petitioner was aware of that fact he had submitted Cover Note to the office at 2.15 P.M on that day i.e. on 4.4.1985. Holding that charges Nos. 1 and 2 which were major charges were proved against the petitioner and having regard to the gravity of the misconduct, the competent authority held that the situation demanded that major penalty of dismissal should be imposed under the relevant rule. Alongwith the order of dismissal, a copy of the report of the enquiry officer was ordered to be given to the petitioner.

3. Though in the writ petition several grounds were raised, at the time of hearing of this petition the learned Counsel made it clear, more than once, that the only contention which was being raised for being decided by this Court was that the order of punishment was bad on

the ground that the enquiry report was not supplied before it was made and that all other contentions were being specifically given up.

4. It was argued on behalf of the petitioner that though the order of dismissal was made on 17.4.1990, that order came to be altered and the punishment of dismissal from service was reduced by the Appellate Authority by order dated 27.11.1990 and a fresh punsihment was imposed in form of reduction in the basic salary to the starting point of Development Officer Gr.I on his reinstatement and the intervening period from the date of his dismissal to the date of his reinstatement was ordered to be treated as having been on loss of pay without break in the continuity of service. It was contended that since the order of dismissal came to be altered in this manner by the Appellate order which was made on 27.11.1990, which fell beyond the date on which the decision of the Supreme Court in Union of India Vs. Mohd. Ramzan Khan, reported in AIR 1991 S.C 471 was rendered on 20.11.1990, the necessity of the requirement that the enquiry officer's report ought to be supplied before a punishment order was to be adjudged in context of the date of the Appellate order and it was therefore no more open for the respondent to take shelter under the direction of Supreme Court contained in paragraph 17 of its judgement in Union of India Vs. Mohd. Ramzan Khan's case that the decision shall have prospective application and no punishment imposed shall be open to challenge on the ground that the Report was not supplied. It was submitted that in this view of the matter, the order of punishment not having been preceded by supply of the enquiry officer's report would be bad notwithstanding the ratio of Mohd. Ramzan Khan's case, which was reaffirmed by the Supreme Court in Managing Director, ECIL, Hyderabad Vs. B. Karunakar and ors., reported in (1993) 4 SCC 727. It was submitted that even when the punishment imposable was other than a major punishment of dismissal, removal or reduction in rank and the rules contemplate enquiry and the inquiry officer was not the disciplinary authority, then also enquiry report was to be supplied, in view of the ratio of the decision of the Supreme Court in Mg. Director, ECIL's case (supra) and therefore, before the Appellate Authority imposed a punishment of reduction in the basic salary to the starting point of Development Officer grade I altering the order of dismissal, it became necessary that before passing the order of punishment the enquiry report ought to have been supplied. Non-supply of such report therefore resulted in violation of principles of natural justice.

In Mohd. Ramzan Khan (supra), the Supreme Court held that in a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected and the delinquent would therefore be entitled to the supply of a copy of such report. It was held that 42nd Amendment in the Constitution did not bring about any change in this position. In paragraph 17 of the judgement it was clarified that this position shall have prospective application and no punishment imposed shall be open to challenge on the said ground.

In Mg. Director, ECIL (supra), the Constitution Bench of the Supreme Court affirmed the ratio of the decision in Mohd. Ramzan's case and held that to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report and consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty and the supply of the copy of the report was thus, a sine-qua-non for a valid, fair, just and proper procedure for the delinquent to defend himself effectively and efficaciously and that Sec.44 of the 42nd Amendment did away with supply of the copy of the report on the proposed punishment, but was not intended to deny fair, just and proper opportunity to the delinquent to have his say on the report when the Disciplinary Authority is to rely thereon. In paragraph 75 of the concurring judgement of Justice K. Ramaswamy, the Supreme Court held that the ratio in Mohd. Ramzan Khan case would apply prospectively from the date of the judgement only to the cases in which decisions were taken and orders made from that date and did not apply to all the matters which either have become final or were pending decision at the appellate forum or in the High Court or the Tribunal or in the Supreme Court.

Even in the judgement delivered by Justice P.B Sawant for Hon'ble the Chief Justice M.N. Venkatachaliah, himself, Justice Mohan and Justice Jeevan Reddy, the Supreme Court in paragraph 44 of the judgement observed that need to make the law laid down in Mohd. Ramzan Khan case prospective in operation requires no emphasis. It was held that to reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned and that both administrative reality and public interest did not

therefore require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan case without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

In the present case, the order of punishment of dismissal was made on 17.4.1990 i.e. prior to the date of the decision in Mohd. Ramzan Khan's case and therefore that order of punishment could not have been questioned on the ground that the enquiry report was not supplied before the making of the order and was supplied alongwith the order. As observed by the Supreme Court in para 44 of its judgement, in Mg. Director, ECIL's case, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the report. In many of such cases, the misconduct had been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. When the order of dismissal was made against the petitioner, the disciplinary authority seems to have proceeded on the basis that there was no need to furnish a copy of the report of the enquiry officer to the delinquent and since the decision in Mohd. Ramzan Khan's case had prospective effect, that order of punishment could not have been questioned on the ground that the report was not earlier supplied. The appellate authority decided the matter on 27.11.1990 and it could not have gone behind the order of punishment of dismissal on the ground that the report of the enquiry officer was not supplied prior to the making of the order of dismissal against the petitioner. The direction of the Supreme Court in Mohd. Ramzan Khan's case had a prospective application which was engrained in para 17 of the judgement in Mohd. Ramzan Khan's case itself, was binding on the appellate authority and even the appellate authority could not have set aside the order of punishment on the ground that the enquiry report was not supplied before the making of that order. The fact that the matter was pending before the appellate authority and not before any Court would not create any right which could not be recognised in view of the direction given by the Supreme Court that the ratio had only prospective effect and that the past proceedings were not to be reopened where punishment orders were already made. When non-supply of the enquiry officers

report before the making of the order of dismissal against the petitioner was of no consequence since the ratio of the decision in Mohd. Ramzan Khan's case was not applicable, it could, a fortiori, be of no consequence even if the punishment earlier imposed was reduced by the appellate authority, because reduction of punishment was not a fresh imposition of punishment. Furthermore, before the punishment was altered by the appellate authority, the report of the enquiry officer was already with the petitioner since it was supplied alongwith the dismissal order to him. Therefore, such a technical contention cannot help the petitioner and if accepted, would run counter to the ratio of the above decisions of the Supreme Court. There is therefore no substance in the contention that non-supply of the enquiry report to the petitioner warranted setting aside the order of punishment as altered and imposed by the appellate authority or the initial punishment order of dismissal on the ground of violation of principles of natural justice. The petition is therefore rejected. Rule is discharged with no order as to costs.

---

*/Mohandas